

Marika R. Athens (AK Bar No. 0411096)
Assistant Attorney General
Department of Law
Office of Special Prosecutions and Appeals
310 K St., Suite 308
Anchorage, Alaska 99501
Telephone: 907-269-6250
Facsimile: 907-269-7939
Email: marika.athens@alaska.gov

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

AMERICAN BOOKSELLERS)
FOUNDATION FOR FREE EXPRESSION;)
AMERICAN CIVIL LIBERTIES UNION OF)
ALASKA; ASSOCIATION OF AMERICAN)
PUBLISHERS, INC.; COMIC BOOK LEGAL)
DEFENSE FUND; ENTERTAINMENT)
MERCHANTS ASSOCIATION; FREEDOM)
TO READ FOUNDATION; DAVID &)
MELISSA LLC d/b/a Fireside Books; BOOK)
BLIZZARD LLC d/b/a Title Wave Books;)
BOSCO’S, INC.; DONALD R. DOUGLAS)
d/b/a Don Douglas Photography; and)
ALASKA LIBRARY ASSOCIATION,)

Plaintiffs,)

v.)

DANIEL S. SULLIVAN, in his official)
capacity as ATTORNEY GENERAL OF THE)
STATE OF ALASKA)

Defendant.)

CIVIL ACTION NO.:

3:10-cv-00193-RRB

MOTION TO CLARIFY

Daniel S. Sullivan, in his official capacity, through his undersigned counsel,
hereby requests further clarification of the court’s Order Granting Preliminary Injunction. In

the Order, the court stated that the State was enjoined from enforcing AS 11.61.128. The Defendant seeks clarification of its ability to defend against an appeal based on the former AS 11.61.128. James Moore was convicted of violating the former AS 11.61.128 and AS 11.41.452, online enticement of a minor. He now appeals his convictions and has been released on probation. Relative to the former AS 11.61.128, Moore appeals that (1) the image he distributed of himself masturbating his penis was not prohibited and (2) the court should have granted a judgment of acquittal. These issues are separate from the claims being raised in this action. The appellant's brief was filed on 12/15/2010 and the State of Alaska's brief is due on 1/18/2011. The Defendant requests the court to clarify whether it may file a brief defending Moore's convictions under the former AS 11.61.128.

DATED this 5th day of January, 2011.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: s/Marika R. Athens
Assistant Attorney General
Department of Law
Office of Special Prosecutions and Appeals
310 K St., Suite 308
Anchorage, Alaska 99501
Telephone: 907-269-6250
Facsimile: 907-269-7939
Email: marika.athens@alaska.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2010, a copy of the foregoing document was served electronically on:

Michael Bamberger
D. John McKay
Thomas W. Stenson
Devereux Chatillon

s/Marika R. Athens
Marika R. Athens

Motion for Clarification

American Booksellers Foundation for Free Expression et al v. Sullivan

U.S. District Court of Alaska No. 3:10-cv-00193-RRB

Page 2 of 2